

EMPLOYMENT APPEALS BOARD DECISION
2024-EAB-0717

Affirmed
Late Request for Hearing Dismissed

PROCEDURAL HISTORY: On May 6, 2024, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant voluntarily quit work without good cause and therefore was disqualified from receiving unemployment insurance benefits effective March 24, 2024 (decision # L0003898191). On May 28, 2024, decision # L0003898191 became final without claimant having filed a request for hearing. On August 5, 2024, claimant filed a late request for hearing on decision # L0003898191. ALJ Kangas considered claimant's request, and on August 9, 2024, issued Order No. 24-UI-262027, dismissing claimant's request for hearing as late, subject to claimant's right to renew the request by responding to an appellant questionnaire by August 23, 2024. On August 16, 2024, claimant filed a timely response to the appellant questionnaire. ALJ Scott considered claimant's response to the appellant questionnaire, and on October 10, 2024, issued Order No. 24-UI-268946, canceling Order No. 24-UI-262027, re-dismissing claimant's request for hearing as late without good cause, and leaving decision # L0003898191 undisturbed. On October 14, 2024, claimant filed an application for review of Order No. 24-UI-268946 with the Employment Appeals Board (EAB).

WRITTEN ARGUMENT: Claimant and the employer both submitted written arguments. EAB did not consider claimant's October 14, 2024, written argument when reaching this decision because claimant did not include a statement declaring that they provided a copy of that argument to the opposing party as required by OAR 471-041-0080(2)(a) (May 13, 2019). Additionally, the employer's argument and claimant's October 27, 2024, argument contained information that was not part of the record while the matter was pending at the Office of Administrative Hearings (OAH), and did not show that the additional information was relevant and material to EAB's determination of whether claimant's late request for hearing should be allowed. *See* ORS 657.275(2) and OAR 471-041-0090(1)(b)(A) (May 13, 2019). EAB considered only information received into the record when reaching this decision. *See* ORS 657.275(2).

FINDINGS OF FACT: (1) On May 6, 2024, the Department mailed decision # L0003898191 to claimant's address on file with the Department. Decision # L0003898191 stated, "You have the right to

appeal our decision and request a hearing if you believe our decision is wrong. We must receive your request for a hearing no later than **May 28, 2024.**” Exhibit 1 at 2 (emphasis in original).

(2) Claimant received decision # L0003898191 on May 6, 2024. Claimant was “very confused by the process” and believed that the effect of decision # L0003898191 was that they were “permanently denied” benefits. Exhibit 3 at 3-4.

(3) On July 3, 2024, claimant received a call “informing [them]... of what [they] needed to do” to file a request for hearing. Exhibit 3 at 4.

(4) On August 5, 2024, claimant filed a late request for hearing on decision # L0003898191.

CONCLUSIONS AND REASONS: Claimant’s late request for hearing is dismissed.

ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist. Under OAR 471-040-0010(1)(b)(B), “good cause” does not include “Not understanding the implications of a decision or notice when it is received.”

The request for hearing on decision # L0003898191 was due by May 28, 2024. Because claimant did not file their request for hearing until August 5, 2024, the request was late. On their response to the appellant questionnaire, claimant explained that they received decision # L0003898191 on the same day it was issued, but were “very confused” when they received it and believed that they were “permanently denied” benefits. Although claimant did not elaborate on what they believed this meant, it appears from the statement that claimant believed there was no way to challenge the determination that they were disqualified from benefits. This was not good cause for failing to file a timely request for hearing because not understanding the implications of a decision is explicitly excluded from “good cause” under OAR 471-040-0010(1)(b)(B).

Claimant also stated on their response to the appellant questionnaire that they “also had previous travel plans, so [they] decided to extend [their] plans and help [their] recently disabled mother” out of state. Exhibit 3 at 4. Given the lack of details on this point, including any description of when they had travel plans or how those plans might have impacted their ability to file a timely request for hearing, this statement is insufficient to show that claimant failed to file a timely request for hearing due to factors beyond their reasonable control or an excusable mistake. It is more likely than not that claimant made a decision not to follow up with the Department regarding decision # L0003898191 while he was out of state because he was prioritizing other matters.

Further, even if this reason for failing to file a timely request for hearing *was* good cause, the record shows that they failed to file the request within a reasonable time of when the factors which prevented a timely filing ceased. Claimant’s statement that they received a call on July 3, 2024, explaining “what [they] needed to do” suggests that these factors ceased on that date, as they then understood how to

appeal the administrative decision. However, claimant did not file their request for hearing until more than a month from that date had passed. Thus, because claimant did not file their request for hearing within seven days of July 3, 2024, they did not file the request within a “reasonable time,” even if they had good cause for initially failing to file a timely request for hearing.

Thus, although claimant’s failure to file a timely request for hearing on decision # L0003898191 because they mistakenly thought there was no way to challenge the denial and because of claimant’s travel plans, they were not “excusable mistakes” within the meaning of the administrative rules. This is because they did not, for example, raise a due process issue, and were not the result of inadequate notice, reasonable reliance on another, or the inability to follow directions despite substantial efforts to comply. Therefore, claimant’s late request for hearing on decision # L0003898191 must be dismissed under ORS 657.875 and OAR 471-040-0010.

DECISION: Order No. 24-UI-268946 is affirmed.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: October 28, 2024

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the Court of Appeals website at courts.oregon.gov. Once on the website, use the ‘search’ function to search for ‘petition for judicial review employment appeals board’. A link to the forms and information will be among the search results.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄໍາຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄໍາຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນໍາຄໍາຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄໍາຮ້ອງຂໍການທົບທວນຄໍາຕັດສິນນໍາສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄໍາແນະນໍາທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄໍາຕັດສິນນີ້.

Arabic

هذا القرار قد يؤثر على منحة البطالة الخاصة بك، إذا لم تفهم هذا القرار، إتصل بمجلس منازعات العمل فوراً، و إذا كنت لا توافق على هذا القرار، يمكنك رفع شكوى للمراجعة القانونية بمحكمة الإستئناف بأوريغون و ذلك بإتباع الإرشادات المدرجة أسفل القرار.

Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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